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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,955	08/27/2001	Chad C. Steele	BC-0112-P04	7282

24994 7590 04/17/2003

GAMBRO, INC
PATENT DEPARTMENT
10810 W COLLINS AVE
LAKEWOOD, CO 80215

EXAMINER

BIANCO, PATRICIA

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 04/17/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/940,955

Applicant(s)

STEELE ET AL.

Examiner

Patricia M Bianco

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Continuation Sheet*.

Continuation of Attachment(s) 6). Other: Nontice of Non-Responsive Amendment.

DETAILED ACTION***Response to Amendment***

The reply filed on 2/10/03 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicant's traversal is on the ground(s) that Applicant believes both group I and group II are directed to the same invention, that being a method of processing blood in an apheresis system and further are related to the presence of a first condition. Applicant further argues that a single search and examination would not be burdensome. Applicant then requested the withdrawal of the restriction requirement and the examination of the claims of both groups I and II. This argument is not found persuasive because as stated in M. P. E. P. § 803, for purposes of initial requirement, a serious burden on the Examiner may be *prima facie* shown "by appropriate explanation either separate classification, separate status in the art, or a different field of search." That *prima facie* showing may be rebutted by appropriate showings or evidence by the Applicant. It is the position of the Examiner that a proper restriction was set forth since the different classification of the two inventions meets the requirements for setting forth a restriction since the method of group I is an automated process or method for determining a condition(s) and the method of group II requires an operator to perform the function. Therefore, the two methods are sent to be distinct inventions. It is a burden on the Examiner insofar as searching in different classes for the distinct inventions. See 37 CFR 1.111.

Further, Applicant did not properly respond to the restriction requirement. For a proper election a provisional election must be made even if the requirement is

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traversed. Therefore, Applicant is advised that for the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143). See MPEP § 818.03(b)

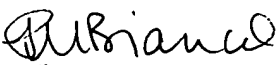
Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Conclusion

Any inquiry concerning the rejections contained within this communication or earlier communications should be directed to examiner Tricia Bianco whose telephone number is (703) 305-1482. The examiner can normally be reached on Monday through Fridays, alternating Fridays off, from 9:00 AM until 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The official fax numbers for the organization where this application or proceeding is assigned is (703) 872-9302 for regular communications and for After Final communications (703) 872-9303.

Tricia Bianco
Patent Examiner
Art Unit 3762

pmb 
April 15th, 2003